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13 Attorneys for Defendant WELLS FARGO  
14 BANK, N.A.

Filed

APR 03 2013

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA — SAN JOSE DIVISION

17 JEFFREY CRETER,

18 Plaintiff,

19 vs.

20 WELLS FARGO BANK, NATIONAL  
ASSOCIATION an FDIC insured corporation  
and DOES 1 through 100 inclusive,

21 Defendant.

CV 13-01498

Federal Case No.:

PSG

State Case No.: 113CV242230

WELLS FARGO BANK N.A.'S NOTICE  
OF REMOVAL

22  
23 TO THE CLERK OF THE ABOVE-ENTITLED COURT; THE HONORABLE UNITED  
24 STATES DISTRICT JUDGE AS ASSIGNED; PLAINTIFF AND HIS ATTORNEYS OF  
25 RECORD:

26 PLEASE TAKE NOTICE that defendant Wells Fargo Bank, N.A. ("Wells Fargo"), hereby  
27 provides this Notice of Removal based on federal question jurisdiction, pursuant to 28 U.S.C.  
28 § 1446, and hereby removes to this Court the state court action described below.

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## I. THE STATE COURT ACTION

On March 5, 2013, plaintiff Jeffrey Creter ("Plaintiff") filed the complaint in Case No. 113CV242230, entitled as captioned above, in the Superior Court of the State of California, County of Santa Clara (the "State Court Action").

In the Complaint Plaintiff asserts three causes of action: (1) violation of Fair Credit Reporting Act; (2) violation of California Consumer Credit Reporting Agencies Act; and (3) violation of California Unfair Business Practices Act.

Plaintiff served Wells Fargo on March 13, 2013.

Attached collectively hereto as **Exhibit A** are a copy of the complaint and all other papers in Wells Fargo's possession either filed by Plaintiff or issued by the Court as of the time of filing this Notice of Removal.

## II. FEDERAL QUESTION JURISDICTION

1. This is a civil action over which this Court has original jurisdiction. 28 U.S.C. § 1331 (governing federal question jurisdiction). The state court action is removable pursuant to 28 U.S.C. § 1441(b) because it arises under the Fair Credit Reporting Act—15 U.S.C. § 1681s-2(b)—a federal statute.

2. In addition, this Court has supplemental jurisdiction over the remaining two claims listed in Plaintiff's complaint, which purport to be grounded in state law. *See* 28 U.S.C. §§ 1367(a) and 1441(c).

## III. TIMELINESS

This Notice is timely, pursuant to 28 U.S.C. § 1446(b), because Wells Fargo was served with the complaint on March 13, 2013.

## IV. OTHER PERTINENT INFORMATION

A. Pursuant to 28 U.S.C. § 1446(a), Wells Fargo files this Notice in the District Court of the United States for the district and division within which the State Court Action is pending. As such, this case is being removed to the United States District Court for the Northern District of California, San Jose Division, because the State Court Action is pending in Santa Clara County. *See* 28 U.S.C. § 1441(a); Civil L.R. 3-2(e).

1           B. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice with its attachments will  
2 promptly be served on plaintiff in the State Court Action, and notice thereof will be filed with the  
3 clerk of the Santa Clara County Superior Court.

4           WHEREFORE, Wells Fargo hereby removes Santa Clara County Superior Court Case  
5 No. 113CV242230 to the United States District Court for the Northern District of California.  
6

7 DATED: April 3, 2013

SEVERSON & WERSON  
A Professional Corporation

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9  
10 By:           /s/ Alisa A. Givental            
11                                   Alisa A. Givental

12 Attorneys for Defendant WELLS FARGO BANK, N.A.  
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Exhibit A

MAR. 18. 2013 12:34PM

8772276027

NO. 3587 P. 1/16

TO: VSI

THIS PAGE IS PART OF THE  
SERVICE OF PROCESS DOCUMENT

DO NOT REMOVE

RECEIVED

MAR 18 2013

53928-020

WELLS FARGO  
LAW DEPT. DSM

4-4

# Legal Order Processing Fax Cover Sheet



TO: Subpoena Processing FAX (866) 359-9145

Note: Only bank officers or designated team members who have authority to accept legal orders and notices documented in the Special Authorities/Responsibility/Restrictions section of their authority card can accept legal orders.

1. Immediately upon receipt, complete the following information for each legal order received.

Type of Legal Order Received ☐ Subpoena's ☐ Search Warrants ☒ IRS Summonses

Store name SAN JOSE MAIN Phone 408277653

MAC A0503-017 AU 0460

Team member's name that was served the legal order Liliana Pastor

Date the legal order was served 13/13/13

How was the legal order served? ☒ In Person ☐ Received via mail ☐ Other  
☐ Regular mail  
☐ Certified mail  
☐ Overnight (e.g. DHL) mail

Time the legal order was served 5:20

2. Fax this cover page along with a copy of all documents pertaining to the legal order, to Subpoena Processing using the fax number indicated above. Forward the following to the Subpoena Processing Department at MAC S3925-020.

- All original documents (including the envelope if the legal order was served via mail).
- Any Payment received. Note: If cash is received, convert the cash to a Branch Settlement ticket prior to sending.

Questions -Contact the Legal Order Processing Department at (480) 724-2000

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

Wells Fargo Bank, National Association an FDIC insured corporation  
and DOES 1 through 100 inclusive

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Jeffrey Creter

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

2013 MAR -5 AM 11:52

CLERK OF COURT  
COUNTY OF SANTA CLARA

By: S. Smith

**NOTICE:** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO:** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Santa Clara

191 North First Street

San Jose, CA 95113

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Elliot Gale, 333 West San Carlos Street, Suite 620 San Jose, CA 95110, 1-408-279-2288

DATE: January 15, 2013

(Fecha)

MAR 5 2013

Clerk, by  
(Secretario)

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):

(SEAL)

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>SCOTT J. SAGARIA (BAR # 217981)</b> <b>ELLIOT W. GALE (#263326)</b> <b>SAGARIA LAW, P.C.</b> <b>333 West San Carlos Street, Suite 1750 San Jose, CA 95110</b> TELEPHONE NO.: 408-279-2288 FAX NO.: 408-279-2299 ATTORNEY FOR (Name): <b>Jeffrey Creter</b>		FOR COURT USE ONLY <div style="border: 1px solid black; padding: 5px; margin-top: 10px;">                     2013 MAR -5 AM 11:52                      Court of Superior Court                      County of Santa Clara                      Dr. <span style="float: right;">S. Smith</span> </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>Santa Clara</b> STREET ADDRESS: <b>191 North First Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>San Jose 95113</b> BRANCH NAME: <b>Civil</b>		<div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <b>13CV242200</b>                      JUDGE:                      DEPT:                 </div>
CASE NAME: <b>Creter v. Wells Fargo Bank, National Association</b>		
<b>CIVIL CASE COVER SHEET</b> <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input checked="" type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other P/DP/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DP/W/D (23) <b>Non-P/DP/W/D (Other) Tort</b> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (09) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DP/W/D tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (06) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (16) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): **Three**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **March 4, 2013**  
**Elliot Gale**

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.



CM-010

# INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

### Auto Tort

Auto (22)--Personal Injury/Property Damage/Wrongful Death  
 Uninsured Motorist (48) (If the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

### Other PVPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
 Asbestos Property Damage  
 Asbestos Personal Injury/Wrongful Death  
 Product Liability (not asbestos or toxic/environmental) (24)  
 Medical Malpractice (45)  
 Medical Malpractice--Physicians & Surgeons  
 Other Professional Health Care Malpractice  
 Other PVPD/WD (23)  
 Premises Liability (e.g., slip and fall)  
 Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
 Intentional Infliction of Emotional Distress  
 Negligent Infliction of Emotional Distress  
 Other PVPD/WD

### Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
 Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
 Defamation (e.g., slander, libel) (13)  
 Fraud (16)  
 Intellectual Property (19)  
 Professional Negligence (25)  
 Legal Malpractice  
 Other Professional Malpractice (not medical or legal)  
 Other Non-PVPD/WD Tort (35)  
 Employment  
 Wrongful Termination (36)  
 Other Employment (15)

### Contract

Breach of Contract/Warranty (06)  
 Breach of Rental/Lease  
 Contract (not unlawful detainer or wrongful eviction)  
 Contract/Warranty Breach--Seller  
 Plaintiff (not fraud or negligence)  
 Negligent Breach of Contract/Warranty  
 Other Breach of Contract/Warranty  
 Collections (e.g., money owed, open book accounts) (09)  
 Collection Case--Seller Plaintiff  
 Other Promissory Note/Collections Case  
 Insurance Coverage (not provisionally complex) (18)  
 Auto Subrogation  
 Other Coverage  
 Other Contract (37)  
 Contractual Fraud  
 Other Contract Dispute

### Real Property

Eminent Domain/Inverse Condemnation (14)  
 Wrongful Eviction (33)  
 Other Real Property (e.g., quiet title) (26)  
 Writ of Possession of Real Property  
 Mortgage Foreclosure  
 Quiet Title  
 Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

### Unlawful Detainer

Commercial (31)  
 Residential (32)  
 Drugs (38) (If the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

### Judicial Review

Asset Forfeiture (05)  
 Petition Re: Arbitration Award (11)  
 Writ of Mandate (02)  
 Writ--Administrative Mandamus  
 Writ--Mandamus on Limited Court Case Matter  
 Writ--Other Limited Court Case  
 Review  
 Other Judicial Review (39)  
 Review of Health Officer Order  
 Notice of Appeal--Labor Commissioner Appeals

### Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)  
 Construction Defect (10)  
 Claims Involving Mass Tort (40)  
 Securities Litigation (28)  
 Environmental/Toxic Tort (30)  
 Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)  
 Enforcement of Judgment  
 Enforcement of Judgment (20)  
 Abstract of Judgment (Out of County)  
 Confession of Judgment (non-domestic relations)  
 Sister State Judgment  
 Administrative Agency Award (not unpaid taxes)  
 Petition/Certification of Entry of Judgment on Unpaid Taxes  
 Other Enforcement of Judgment Case

### Miscellaneous Civil Complaint

RICO (27)  
 Other Complaint (not specified above) (42)  
 Declaratory Relief Only  
 Injunctive Relief Only (non-harassment)  
 Mechanics Lien  
 Other Commercial Complaint Case (non-tort/non-complex)  
 Other Civil Complaint (non-tort/non-complex)

### Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
 Other Petition (not specified above) (43)  
 Civil Harassment  
 Workplace Violence  
 Elder/Dependent Adult Abuse  
 Election Contest  
 Petition for Name Change  
 Petition for Relief From Late Claim  
 Other Civil Petition

1 SCOTT J. SAGARIA (BAR # 217981)  
2 SJSagaria@sagarialaw.com  
3 ELLIOT W. GALE (BAR #263326)  
4 Egalet@sagarialaw.com  
5 SAGARIA LAW, P.C.  
333 West San Carlos Street, Suite 620  
San Jose, CA 95110  
408-279-2288 ph  
408-279-2299 fax

6 Attorneys for Plaintiff

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA CLARA  
10 LIMITED JURISDICTION  
11

12 CASE NO. **113CV242200**

13  
14 COMPLAINT FOR DAMAGES:

15 JEFFREY CRETER,

16 Plaintiff,

17 v.

18  
19 WELLS FARGO BANK, NATIONAL  
20 ASSOCIATION an FDIC insured  
21 corporation and DOES 1 through 100  
inclusive,

22 Defendants.

1. Violation of Fair Credit Reporting Act;  
2. Violation of California Consumer Credit Reporting Agencies Act;  
3. Violation of California Unfair Business Practices Act

23  
24 COMES NOW Plaintiff JEFFREY CRETER, an individual, based on information and belief, to  
25 allege as follows:  
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COMPLAINT-1

(ENDORSED)

2013 MAR -5 11:52

Clara H. Smith, Clerk of the Court  
By: Smith Deputy Clerk

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**INTRODUCTION**

1. This action seeks redress for the unlawful and deceptive practices committed by the Defendants in connection with their inaccurate reporting of a prepetition debt discharged in bankruptcy. In particular, Defendants' conduct involves inaccurately reporting Plaintiff's account as "charged off" and "120 days past due" to Transunion and Experian after receiving notice of Plaintiff's bankruptcy discharge. In addition, Defendant failed to report the debt as disputed to Equifax. Plaintiff seeks monetary and declaratory relief based on violations of Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b), California Consumer Credit Reporting Act, California Civil Code §1785.25(a), and California Business and Professions Code § 17200.

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**JURISDICTION AND VENUE**

2. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and every paragraph above, fully set forth herein.
3. Plaintiff, Jeffrey Creter (hereinafter "Plaintiff"), is an individual and currently resides in the county of Santa Clara, California.
4. This venue is proper pursuant to California Code of Civil Procedure § 395.5.
5. This Court has jurisdiction over Plaintiff's allegations pursuant to California Code of Civil Procedure § 410.10 et seq.
6. Plaintiff is a natural person and competent adult who at all relevant times in this Complaint resided in the State of California.
7. Defendant Wells Fargo Bank, National Association (hereinafter "Creditor") is located at 101 N. Phillips Avenue Sioux Falls, SD 57104. Creditor collects debts on its own behalf throughout the state of California.
8. Plaintiff is unaware of the true names and capacities of Defendants DOES 1 through 100, inclusive. Plaintiff is informed and believes and thereon alleges that each fictitious Defendant was in some way responsible for the matters and things complained of herein, and in some fashion, has legal responsibility therefore. When the exact nature and identity of each fictitious Defendant's responsibility for the matters and things herein alleged are ascertained by Plaintiff, Plaintiff will seek to amend this Complaint

1 and all proceedings to set forth the same, pursuant to California Code of Civil  
2 Procedure 474..

- 3 9. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned  
4 herein, each of Defendant is, and at all relevant times herein was, the agent, employee,  
5 and alter ego of each of the remaining Co-Defendants, and in committing the acts  
6 herein alleged, was acting in the scope of their authority as such agents, employees, or  
7 alter egos and with the permission and consent of the remaining Co-Defendants.

8 **PRE-LITIGATION CLAIM FILINGS**

- 9 10. On or about October 12, 2012 Plaintiff sent the three credit reporting agencies  
10 ("CRA's"), Experian, Transunion, and Equifax, written notices disputing the accuracy  
11 of the "charge off" notation reported on Plaintiff's discharged credit account. Pursuant  
12 to Section 1681i(a)(2) of the Fair Credit Reporting Act, all three credit reporting  
13 agencies notified Creditor of Plaintiff's dispute. After receiving notice of Plaintiff's  
14 allegations, Creditor updated its records with all three CRA's to reflect that Plaintiff  
15 included the account in his bankruptcy petition. Creditor, thereafter, re-reported the  
16 status of the account as "charged off" to Transunion and Equifax while also failing to  
17 report that Plaintiff disputed the account information.

18 **GENERAL ALLEGATIONS**

- 19 11. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and  
20 every paragraph above, as though fully set forth herein.  
21 12. On March 26, 2008 Plaintiff filed a voluntary Chapter 7 bankruptcy petition in the  
22 United States Bankruptcy Court for the Western District of Washington.  
23 13. In the Schedules filed with the petition in this case and on the master mailing matrix  
24 filed with the Clerk of this Court, an unsecured debt was listed on Schedule F in favor  
25 of Creditor in the amount of \$1,225.34.  
26 14. On August 25, 2008 Plaintiff was granted a discharge of all dischargeable debts  
27 pursuant to 11 U.S.C. § 727. Creditor was noticed by electronic transmission of  
28 Plaintiff's discharge on August 26, 2008. Since Plaintiff never re-affirmed Creditor's

1 debt during bankruptcy, Plaintiff alleges that this Discharge included the debt owed to  
2 Creditor.

3 15. On August 13, 2012 Plaintiff pulled credit reports from Experian, Equifax, and  
4 Transunion to ensure accurate reporting. The reports indicates that Creditor reported  
5 the status of the account to all three CRA's as "charged off" after Plaintiff received a  
6 bankruptcy discharge.

7 16. Plaintiff alleges the information was misleading and inaccurate. Plaintiff alleges the  
8 "charge off" notation was inaccurate because it suggests that the account Defendant  
9 still has the ability to enforce the debt personally against Plaintiff. Plaintiff alleges that  
10 the "charge off" notation was also inaccurate because it violates the industry standard  
11 for credit reporting under the Metro 2 Format. Plaintiff alleges that upon entry of the  
12 discharge order, Defendant instead should have updated its records and reported the  
13 account as "discharged in bankruptcy."

14 17. On or about October 12, 2012 Plaintiff sent a letter to the CRA's Experian, Transunion,  
15 and Equifax requesting a formal, full, and complete investigation of Creditor's account  
16 with Plaintiff. Specifically, Plaintiff disputed the accuracy of the "charge off" notation  
17 Defendant reported on the account after entry of the discharge order. Plaintiff alleges  
18 all three CRA's sent notice of Plaintiff's dispute to Creditor.

19 18. On or about November 14, 2012 Plaintiff received reinvestigation reports from Equifax,  
20 Experian, and Transunion. Plaintiff alleges the reports state that Creditor corrected the  
21 "charge off" notation and reported the account as "discharged in bankruptcy."

22 19. On or about November 19, 2012 Plaintiff received reinvestigation reports from  
23 Transunion and Experian. Plaintiff alleges the report indicates Creditor re-reported the  
24 status of the account as "charged off" and "120 days past due."

25 20. To date, Creditor still refuses to correct Plaintiff's credit report despite being noticed of  
26 the original bankruptcy and re-noticed of its inaccurate reporting from Experian,  
27 Equifax, and Transunion.

28 21. The actions of Creditor as alleged herein are acts in violation of the Fair Credit  
Reporting Act, 15 U.S.C. § 1681s-2(b).

COMPLAINT - 4



1 22. The actions of Creditors as alleged herein are acts in violation of the consumer credit  
2 reporting agencies act California Civil Code § 1785.25(a).

3 23. The actions of Creditors as alleged herein are acts in violation of the California  
4 Business and Professions Code § 17200.

5 **FIRST CAUSE OF ACTION**  
6 (Violation Of Fair Credit Reporting Act  
7 15 U.S.C. § 1681s-2(b))  
(Against Defendant Creditor and Does 1-100)

8 24. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and  
9 every paragraph above, as though fully set forth herein.

10 25. Creditor, in the course of regular business, reports information to credit reporting  
11 agencies.

12 26. Plaintiff promptly disputed Creditor's inaccurate reporting with Experian, Transunion,  
13 and Equifax. All three CRA's sent notice of Plaintiff's dispute to Creditor pursuant to  
14 Section 1681i(a)(2) of the Fair Credit Reporting Act. Creditor was thereafter under a  
15 duty to reasonably investigate Plaintiff's dispute pursuant to Section 1681s-2(b).

16 27. Plaintiff alleges that the results he received from the CRA's indicate Creditor  
17 concluded that the account information was inaccurate following its investigation.

18 28. Plaintiff alleges that upon conclusion of its investigation, Creditor was obligated to  
19 notify all three CRA's of its past misreporting and prevent any future misreporting  
20 pursuant to 15 U.S.C. § 1681s-2(b)(1)(E).

21 29. Plaintiff alleges Creditor violated Section 1681s-2(b)(1)(D)-(E) by re-reporting  
22 Plaintiff's discharged credit account as "charged off" after updating its records in  
23 response to Plaintiff's dispute with the CRA's.

24 30. Plaintiff is informed that Creditor separately violated Section 1681s-2(b) by failing to  
25 report to Transunion and Experian that the account information was in dispute after  
26 receiving notice of Plaintiff's dispute from both CRA's.

27 31. Creditor's failure to correct the previously disclosed inaccuracies on Plaintiff's credit  
28 report was intentional and in reckless disregard of its duty to refrain from reporting

1 inaccurate information. Consequently, creditor willfully and negligently failed to  
2 comply with its duty to investigate Plaintiff's dispute under 15 U.S.C. § 1681(n) & (o).

3 32. As a direct and proximate result of Creditor's willful and untrue communications,  
4 Plaintiff has suffered actual damages including but not limited to reviewing credit  
5 reports from all three consumer reporting agencies, traveling to and from Plaintiff's  
6 counsel's office, sending demand letters, continued impairment to her credit score,  
7 denial of credit, and such further expenses in an amount to be determined at trial.

8 33. As a further direct and proximate result of Creditor acts state herein, Plaintiff incurred  
9 pain and suffering, was impeded in seeking necessary products and services from  
10 vendors, additional credit from other credit agencies, suffered humiliation,  
11 embarrassment, anxiety, loss of sleep, emotional distress, and defamation of character.

12 34. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

13 **SECOND CAUSE OF ACTION**

14 (Violation Of Consumer Credit Reporting Agencies Act  
California Civil Code § 1785.25(a))

15 (Against Defendants Creditor and Does 1-100)

16 35. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and  
17 every paragraph above, as though fully set forth herein.

18 36. Creditor, in the ordinary course of business, regularly and on a routine basis furnishes  
19 information to one or more consumer credit reporting agencies.

20 37. Creditor intentionally and knowingly reported inaccurate and false information.  
21 Plaintiff alleges that Creditor reported the account status as "charged off" to Transunion  
22 and Experian after entry of the discharge order. Plaintiff alleges Creditor's actions  
23 violated California Civil Code § 1785.25(a).

24 38. Creditor had reason to know reporting to Transunion and Experian was inaccurate.  
25 Plaintiff alleges that the disputes, credit reporting resource guide, and the results of its  
26 own investigation provided Creditor notice of its inaccurate reporting.  
27  
28

1 39. Creditor failed to notify consumer reporting agencies that the information Defendant  
2 provided such agencies, was inaccurate before the end of 30 business days, in violation  
3 of California Civil Code § 1785.25(a).

4 40. Creditor failed to correct inaccurate information provided to the agencies as described  
5 hereinabove in violation of California Civil Code § 1785.25(a).

6 41. Creditor's communications of false information, and repeated failures to investigate,  
7 and correct their inaccurate information and erroneous reporting were done knowingly,  
8 intentionally, and in reckless disregard for their duties and Plaintiff's rights.

9 42. As a direct and proximate result of Creditors willful and untrue communications,  
10 Plaintiff has suffered actual damages including but not limited to reviewing credit  
11 reports from all three consumer reporting agencies, traveling to and from Plaintiff's  
12 counsel's office, sending demand letters, continued impairment to her credit score,  
13 denial of credit, and such further expenses in an amount to be determined at trial.

14 43. As a further direct and proximate result of Creditor acts state herein, Plaintiff incurred  
15 pain and suffering, was impeded in seeking necessary products and services from  
16 vendors, additional credit from other credit agencies, suffered humiliation,  
17 embarrassment, anxiety, loss of sleep, emotional distress, and defamation of character.

18 44. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

19 **THIRD CAUSE OF ACTION**

20 (Unfair Business Practices Act

21 California Business and Professions Code § 17200)

22 (Against Defendant Creditor and Does 1-100)

23 45. Plaintiff re-alleges and incorporates herein by this reference the allegations in each and  
24 every paragraph above, as though fully set forth herein.

25 46. Plaintiff brings this action in individual capacity and on behalf of the general public.

26 47. Creditor at all times relevant to this Complaint, was engaged in the business of  
27 collections and providing services on credit to qualified applicants.  
28



1 48. Commencing on or about January 18, 2012 and continuing to the present, Creditor  
2 committed the acts of unlawful practices as defined by Business and Professions Code  
3 § 17200 and described in the above stated Causes of Action.

4 49. Creditor's acts and practices described above were unlawful under the California Civil  
5 Code § 1785.25(a) and therefore constitute unlawful practices within the meaning of  
6 Business and Professions Code § 17200.

7 50. These unlawful business practices of Creditor are likely to continue and therefore will  
8 continue to injure Plaintiff by inaccurate record keeping, failure to correct inaccuracies  
9 and erroneous dissemination of inaccurate information, and present a continuing threat  
10 to the public.

11 51. Wherefore, Plaintiff prays for judgment as hereinafter set forth.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment as follows:

- 14 a. For preliminary and permanent injunctive relief to stop Defendants from  
15 engaging in the conduct described above;
- 16 b. Award \$10,000 in statutory and actual damages pursuant to 15 U.S.C. § 1681n  
17 and California Civil Code § 1785.31;
- 18 c. Award attorney's fees and costs of suit incurred herein pursuant to 15 U.S.C. §  
19 1681n & o; California Civil Code § 1785.31;
- 20 d. For determination by the Court that Creditor's policies and practices are  
21 unlawful and in willful violation of 15 U.S.C. § 1681n, et seq.; and California  
22 Business and Professions Code § 17200, et seq.;
- 23 e. For determination by the Court that Creditor's policies and practices are  
24 unlawful and in negligent violation of 15 U.S.C. § 1681o  
25  
26  
27  
28

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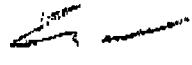
**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial of this matter by jury.

**SAGARIA LAW, P.C.**

Dated: March 4, 2013

By:

  
\_\_\_\_\_  
Scott Sagaria, Esq.  
Elliot Gale, Esq.  
Attorneys for Plaintiff

ATTACHMENT CV-5012

**CIVIL LAWSUIT NOTICE**

Superior Court of California, County of Santa Clara  
191 N. First St., San Jose, CA 95113

CASE NUMBER **113CV242200**

**PLEASE READ THIS ENTIRE FORM**

**PLAINTIFF** (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the Complaint, Summons, an Alternative Dispute Resolution (ADR) Information Sheet, and a copy of this Civil Lawsuit Notice, and you must file written proof of such service.

**DEFENDANT** (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the Complaint, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the Summons and Complaint;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

**Warning:** If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

**RULES AND FORMS:** You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), [www.sccselfservice.org](http://www.sccselfservice.org) (Select "Civil") or from:

- State Rules and Judicial Council Forms: [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) and [www.courtinfo.ca.gov/rules](http://www.courtinfo.ca.gov/rules)
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1loc.htm>

**CASE MANAGEMENT CONFERENCE (CMC):** You must meet with the other parties and discuss the case. In person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a Case Management Statement (Judicial Council form CM-110) at least 15 calendar days before the CMC.

**You or your attorney must appear at the CMC. You may ask to appear by telephone - see Local Civil Rule 8.**

Your Case Management Judge is: Honorable Peter Kirwan Department: 8

The 1<sup>st</sup> CMC is scheduled for: (Completed by Clerk of Court)

Date: JUL -2 2013 Time: 3:00 PM in Department: 8

The next CMC is scheduled for: (Completed by party if the 1<sup>st</sup> CMC was continued or has passed)

Date: \_\_\_\_\_ Time: \_\_\_\_\_ in Department: \_\_\_\_\_

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** If all parties have appeared and filed a completed ADR Stipulation Form (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at [www.sccsuperiorcourt.org/civil/ADR/](http://www.sccsuperiorcourt.org/civil/ADR/) or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

**WARNING:** Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA**  
**ALTERNATIVE DISPUTE RESOLUTION**  
**INFORMATION SHEET / CIVIL DIVISION**

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Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

*What is ADR?*

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

*What are the advantages of choosing ADR instead of litigation?*

ADR can have a number of advantages over litigation:

- < ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- < ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- < ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- < ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- < ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

*What are the main forms of ADR offered by the Court?*

< Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

< Mediation may be appropriate when:

- < The parties want a non-adversary procedure
- < The parties have a continuing business or personal relationship
- < Communication problems are interfering with a resolution
- < There is an emotional element involved
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

< Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
- < The case involves a technical issue in which the evaluator has expertise
- < Case planning assistance would be helpful and would save legal fees and costs
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-